



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carter Chevrolet Agency, Inc.

File: B-229679

Date: February 3, 1988

DIGEST

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire vehicles is justified where offerors are expected to take a variety of exceptions to the specifications and discussions are necessary to resolve those matters and to define the terms of each offer.

DECISION

Carter Chevrolet Agency, Inc., protests the General Services Administration's (GSA) use of competitive negotiation in the procurement of cars and light trucks for the Department of Defense under request for proposals (RFP) No. FAPR-K5-82000-N. Carter contends that the vehicles should be procured by sealed bidding procedures.

We deny the protest.

This procurement covers approximately 9,791 vehicles and is known as the "military family buy." The RFP, as amended, divided the vehicles into 17 groups of cars and light trucks, each group representing a specific vehicle classification identified according to federal standard specifications. The offerors were to submit unit and total prices for definite quantities of vehicles which were set forth as line items within each group. Prices were also requested for special options, if available, which were not included in the unit price. The solicitation did not require offerors to submit technical proposals. Award was to be made in the aggregate, by group, for all items within each group or, for all groups bid, whichever resulted in the lowest evaluated total price.

Carter argues that under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253 (Supp. III 1985), and implementing regulations, Federal Acquisition Regulation (FAR) § 6.401, sealed bidding is to be used where, as here, award will be based only on price-related factors. Carter

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contends that GSA has issued detailed specifications that precisely state the quantities and characteristics of the vehicle requirements. The protester argues that GSA has no need to conduct discussions since no technical issues are to be addressed and that GSA could handle any refinement of the specifications as they have in the past through amendments based on prebid conferences and bidder's requests for clarifications.

GSA responds that the use of negotiation is appropriate in this procurement because the agency needs to conduct discussions with the offerors, it expects the use of negotiation to increase competition and it does not have sufficient time to solicit sealed bids. The need to use negotiation procedures is, according to the agency, illustrated by the prior year's procurement for these vehicles which was a sealed bid procurement. In the prior procurement, the agency says it received 110 requests from competitors for solicitation changes which resulted in numerous delays. Further, due to these delays, the agency was forced to accept vehicles from 2 model years and received only 1 bid on 7 of the 19 groups solicited. According to the agency, the ability to conduct discussions with the offerors under negotiation procedures concerning such matters as the specification requirements, model availability, options and delivery schedule will help eliminate many of the problems encountered under the prior solicitation.

Under CICA, agencies are required to obtain full and open competition and to use the competitive procedure or combination of competitive procedures best suited to the circumstances of the procurement. 41 U.S.C. § 253. Sealed bidding procedures are to be used if time permits, award is to be made on the basis of price and price-related factors, discussions are not necessary and there is a reasonable expectation of receiving more than one sealed bid. 41 U.S.C. § 253; FAR § 6.401. If one of these factors is not present, then the agency may solicit competitive proposals pursuant to negotiation procedures. The determination regarding which competitive procedure is appropriate essentially involves the exercise of business judgment by the contracting officer. Essex Electro Engineers, Inc., 65 Comp. Gen. 242 (1986), 86-1 CPD ¶ 92. For example, in a recent case concerning the same protester and a similar solicitation we held that the agency's decision to use negotiation procedures in lieu of sealed bidding to acquire vehicles was justified where the agency concluded that discussions were necessary "to ensure that the numerous and far-ranging exceptions usually taken by all offerors to the specifications or pricing requirements were addressed" and because there was not a reasonable expectation of receiving

more than one bid on a significant percentage of the solicitation groups. Carter Chevrolet Agency, Inc., B-228151, Dec. 14, 1987, 87-2 CPD ¶ 584. As in the prior decision, we think that GSA acted appropriately here in choosing to use competitive negotiation.

As stated earlier, GSA argues that it needs to use competitive negotiation to conduct an orderly and effective procurement of the vehicles. The protester attributes all the agency's cited difficulties under the prior solicitation to the solicitation's issuance in January 1987, late in the manufacturer's production cycle for 1987 models. GSA responds that it has encountered a number of the same problems under the current solicitation, which was issued in November, earlier in the production cycle, but has been better able to handle them because of the greater flexibility of the negotiation procedures. For example, although the protester maintains that the large number of requests for specification deviations received under the earlier solicitation was due to its late issuance, the agency reports that it has received a comparable number of such requests under the current solicitation.

Further, it was in our view reasonable for GSA to conclude that the flexibility inherent in the ability to conduct discussions with offerors would be beneficial both to it and the competitors under a solicitation such as this one which contains a myriad of differing and specific requirements. Through the negotiation process the agency may develop the actual contractual terms and thereby define and frame the terms of an offer. Carter Chevrolet Agency, Inc., B-228151, supra. A sealed bid procurement does not allow for discussions and would require the rejection of all offers taking exception to the solicitation requirements even though the exception may be attractive from a price or technical standpoint. FAR § 14.404-2.1/

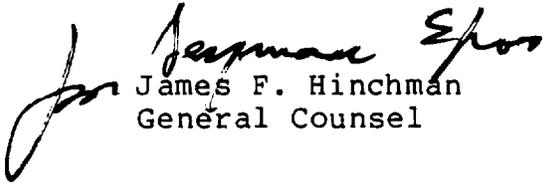
The number and variety of the exceptions taken under both the previous solicitation and the present one indicate that GSA's determination that a negotiated procurement was necessary was not an unreasonable exercise of the agency's judgment. Since we have concluded that the agency's determination that discussions would be appropriate under the current solicitation was reasonable, we need not consider

1/ Carter argues that specification problems can be addressed in a prebid conference under sealed bidding. Prebid conferences are used to explain complicated specifications to bidders prior to the submission of bids. FAR § 14.207. They cannot be used to assess the merits of an actual offer which deviates from the RFP requirements.

the other reasons cited by GSA for its use of negotiation procedures.

Finally, the protester does not cite the prejudice to it because of the agency's choice of competitive procedure. Nor can we readily discern from the record the nature of any such prejudice since the award is to be based on price alone without consideration of technical merit.

The protest is denied.


James F. Hinchman
General Counsel